

**COMMENTS OF CHAIR LINDA M. KASEKERT
NEW JERSEY CASINO CONTROL COMMISSION
APRIL 2, 2008
RE: PETITION TO RECONVEY ASSETS OF ADAMAR**

ON NOVEMBER 30, 2007, ADAMAR'S CASINO LICENSE EXPIRED. NEVERTHELESS, PROVISIONS IN THE ADMINISTRATIVE PROCEDURE ACT PREVENTED THE LICENSE FROM LAPSING, AND THUS ALLOWED THE CASINO TO REMAIN OPEN, THROUGH DECEMBER 12, 2007, WHEN THE COMMISSION CONCLUDED ITS HEARING ON THE LICENSE RENEWAL. HOWEVER, IN REFUSING TO RENEW THE LICENSE, THE COMMISSION FACED THE DILEMMA OF EITHER ORDERING THE IMMEDIATE CLOSURE OF THE CASINO BECAUSE ADAMAR WAS DISQUALIFIED, OR FINDING ANOTHER MECHANISM BY WHICH THOSE OPERATIONS COULD CONTINUE.

NOTHING IN THE ICA PROVISIONS SPECIFICALLY AFFORDS A FORMER CASINO LICENSEE WHOSE LICENSE HAS EXPIRED THE ABILITY TO CONTINUE TO OPERATE A CASINO. CERTAINLY, IN APPROPRIATE CIRCUMSTANCES THE PENDENCY OF ICA DOES NOT PREVENT THE COMMISSION FROM RENEWING A CASINO LICENSE. N.J.S.A. 5:12-95.12B. NEVERTHELESS, THE GRANTING OF ICA DOES NOT RELIEVE THE UNDERLYING CASINO LICENSEE FROM THE OBLIGATIONS AND RESPONSIBILITIES OTHERWISE INCUMBENT UPON

IT UNDER THE CASINO CONTROL ACT. *N.J.S.A. 5:12-95.15*. THUS, A SEVERE ENOUGH BREACH OF THOSE OBLIGATIONS BY THE CASINO LICENSEE COULD LEAD TO ITS LICENSE DENIAL OR REVOCATION WITHOUT NECESSARILY RESULTING IN THE CORRELATIVE ICA TRUST AGREEMENT BECOMING OPERATIVE IF THE ICA CANDIDATE PLAYED NO ROLE IN THAT BREACH. BUT THE TRUSTEESHIP ALONE WOULD BE INSUFFICIENT IN SUCH CIRCUMSTANCES TO ALLOW THE CASINO TO REMAIN OPEN.

SIMILARLY, ONCE AN ICA TRUST IS OPERATIVE, THE ICA TRUSTEE EXERCISES ALL RIGHTS INCIDENT TO THE OWNERSHIP OF THE TRUST PROPERTY AND BECOMES INVESTED WITH THE POWERS AND DUTIES NECESSARY TO THE UNENCUMBERED EXERCISE OF THOSE RIGHTS. *N.J.S.A. 5:12-95.14C*. BUT WHERE, AS HERE, THERE IS NO LONGER AN UNDERLYING LICENSE, THE ICA STATUTE IS SILENT ON HOW TO REINVIGORATE THAT WHICH WAS LOST IN ORDER FOR THE CASINO TO REMAIN OPEN.

CONVERSELY, THE ACT'S CONSERVATORSHIP PROVISIONS, IN FURTHERANCE OF MAINTAINING CONTINUITY AND STABILITY IN CASINO OPERATIONS, DIRECTLY AFFORD THE COMMISSION THE MEANS TO ENSURE THAT A CASINO REMAINS IN OPERATION "UPON THE FAILURE OR REFUSAL TO RENEW A CASINO LICENSE." *N.J.S.A.*

5:12-130.1A. HAVING ELECTED TO INVOKE THOSE PROVISIONS, IN MY VIEW THE COMMISSION CANNOT LIGHTLY ABANDON THEM NOW BECAUSE OF PERCEIVED EXTRA-REGULATORY CONSEQUENCES, SUCH AS A BANKRUPTCY FILING OR THE DELAWARE LITIGATION.

AT THE HEART OF THE DISCUSSION IS SECTION 130.2A, WHICH PROVIDES AS FOLLOWS:

the conservator shall become vested with the title of all the property of the former or suspended licensee relating to the casino and the approved hotel, subject to any and all valid liens, claims, and encumbrances. The conservator shall have the duty to conserve and preserve the assets so acquired to the end that such assets shall continue to be operated on a sound and businesslike basis.

BASED ON THIS PROVISION, THE DELAWARE COURT CONCLUDED THAT JUSTICE STEIN'S APPOINTMENT AS CONSERVATOR, AND THE TRANSFER OF TITLE FROM ADAMAR TO HIM, CAUSED TROPICANA ENTERTAINMENT TO BREACH SECTION 4.06 OF THE TRUST INDENTURE BY PERMITTING AN IMPERMISSIBLE "ASSET DISPOSITION" THEREUNDER.

SECTION 130.2A IS AN ESSENTIAL COMPONENT OF THE CONSERVATOR REGULATORY SCHEME. PRIOR TO A FINDING THAT A CASINO LICENSEE IS DISQUALIFIED, IT OWNS, THAT IS, HAS TITLE TO, THE CASINO HOTEL, ITS PRIMARY ASSET. UNDER SECTION 82 OF THE ACT, ANYONE THAT OWNS A CASINO HOTEL IS BOTH ELIGIBLE AND

REQUIRED TO HOLD A CASINO LICENSE. AFTER A CASINO LICENSE RENEWAL IS DENIED, THERE OBVIOUSLY CEASES TO BE A VALID CASINO LICENSE. THUS, THE FORMER CASINO LICENSEE, FOR PURPOSES OF SECTION 82, CAN NO LONGER OWN THE CASINO HOTEL PROPERTY WITH AN ONGOING CASINO OPERATION THEREIN. THIS IS ESSENTIALLY THE POINT THAT THE DIVISION MAKES BUT THAT THE JUSTICE OVERLOOKS.

ACCORDINGLY, BY MANDATE OF SECTION 130.2A, TITLE TO THE PROPERTY, WHICH IS THE PRIMARY INDICIA OF OWNERSHIP, IS IMMEDIATELY (AND I WOULD SUBMIT IRREVOCABLY) STRIPPED FROM THE FORMER LICENSEE UPON THE INSTITUTION OF THE CONSERVATORSHIP SO AS TO AVOID A CONFLICT WITH SECTION 82. IF TITLE DID NOT SO PASS, THE PRIMARY, IF NOT EXCLUSIVE, AVENUE AVAILABLE TO THE COMMISSION WOULD BE TO ORDER THE IMMEDIATE CESSATION OF CASINO OPERATIONS UPON THE DENIAL OF A LICENSE RENEWAL.

CERTAINLY, A POSSESSORY INTEREST IN A CASINO HOTEL PROPERTY IS ALSO AN INDICATOR OF OWNERSHIP THAT ARGUABLY WOULD REQUIRE CASINO LICENSURE UNDER SECTION 82. HOWEVER, IN CONTRAST TO TITLE TO THE PROPERTY, THE LEGISLATURE IN SECTION 130.2B(1) LEFT TO THE COMMISSION'S

DISCRETION WHETHER TO EXPEL A FORMER CASINO LICENSEE FROM ITS POSSESSORY INTEREST IN THE CASINO HOTEL UPON THE INSTITUTION OF A CONSERVATORSHIP. IN CIRCUMSTANCES WHERE THE COMMISSION EXERCISES THAT DISCRETION, SUCH THAT THE FORMER LICENSEE IS NOT COMPELLED TO SURRENDER POSSESSION OF THE CASINO HOTEL, THERE IS AMPLE JUSTIFICATION TO CONCLUDE THAT RETAINING THAT POSSESSORY INTEREST IN THE CONTEXT OF A CONSERVATORSHIP ACTION DOES NOT TRIGGER THE CASINO LICENSURE REQUIREMENTS OF SECTION 82.

WITH THAT BACKGROUND, THE JUSTICE'S APPLICATION CAN NOW BE PUT IN CONTEXT. HIS REQUEST TO RECONVEY TITLE FROM HIM TO ADAMAR IS IN DIRECT CONFLICT WITH THE EARLIER DISCUSSION REGARDING THE INTERPLAY BETWEEN SECTIONS 82 AND 130.2A OF THE ACT, AND AT NO POINT IN HIS PAPERS DOES HE ADDRESS THE RELATIONSHIP BETWEEN THOSE TWO SECTIONS. ALTHOUGH HE DOES CONCEDE THAT TITLE TRANSFER IS MANDATORY UNDER SECTION 130.2A, HE INSISTS THAT THE COMMISSION RETAINS THE DISCRETION TO ALLOW TITLE TO REVERT TO ADAMAR, AGAIN WITHOUT AT ALL DISCUSSING THE IMPLICATIONS THAT FLOW THEREFROM UNDER SECTION 82. IN INSISTING THAT SUCH DISCRETION EXISTS, HE MAKES NO EFFORT TO CONTRAST THE

ADMITTEDLY MANDATORY PROVISIONS ON TITLE TRANSFER IN SECTION 130.2A, WITH THE PERMISSIVE PROVISIONS IN SECTION 130.2B(1) REGARDING POSSESSION.

THE COMMISSION DOES NOT TAKE THE LEGISLATURE'S DISPARATE TREATMENT OF TITLE AND POSSESSION AS HAPPENSTANCE. HAD THE LEGISLATURE INTENDED THE FLEXIBILITY IN TREATMENT GRANTED TO POSSESSORY INTERESTS TO APPLY ALSO TO TITULAR ONES, IT MOST ASSUREDLY WOULD HAVE CHOSEN WORDS MORE AKIN TO THOSE USED IN SECTION 130.2B(1), RATHER THAN THOSE THAT IT ACTUALLY USED IN SECTION 130.2A. JUSTICE STEIN'S ARGUMENT ADMITS OF THE POSSIBILITY THAT THE LEGISLATURE WAS MERELY CONCERNED WITH AN INSTANTANEOUS TRANSFER OF TITLE THAT COULD BE FOLLOWED IMMEDIATELY BY A COMMISSION SANCTIONED REVERSION THEREOF TO THE DISQUALIFIED FORMER LICENSEE. THIS SUGGESTION WOULD STRAIN THE ACTUAL WORDS CHOSEN BY THE LEGISLATURE, PARTICULARLY WHEN THEY ARE READ IN THE CONTEXT OF THE IMPLICATIONS THAT WOULD ARISE FOR PURPOSES OF SECTION 82.

GIVEN THE MANDATE IN SECTION 130.2A THAT TITLE MUST PASS, PRESUMABLY THERE WOULD NEED TO BE AN EQUALLY STRONG MANDATORY COUNTERWEIGHT THAT WOULD COMPEL THE

REVERSION, BUT JUSTICE STEIN CITES NO SUCH PROVISION. HE DOES CITE SECTIONS 75 AND 130.1A, WHICH AT MOST CONFER THE DISCRETION ON THE COMMISSION TO GRANT THE RELIEF HE SEEKS BUT DO NOT COMPEL IT. INVOKING THE OMNIBUS PROVISIONS OF SECTION 75 IS HARDLY APPROPRIATE, GIVEN THE PREVIOUSLY DISCUSSED STRONG POLICY REASONS WHY THE LEGISLATURE COMMANDED A TITLE TRANSFER IN THE FIRST PLACE.

AS FOR SECTION 130.1A, IT IS ADDRESSED TO THE POWERS AND DUTIES THAT THE COMMISSION ELECTS TO CONFER ON THE CONSERVATOR BY WAY OF INSTRUCTIONS. RATHER THAN MAKE SUCH INSTRUCTIONS, ONCE GIVEN, INTRACTABLE, IT IS PLAIN WHY THE LEGISLATURE WOULD VEST THE COMMISSION WITH BROAD AUTHORITY TO MODIFY THOSE INSTRUCTIONS, AS IT HAS DONE IN SECTION 130.1A. HOWEVER, WHERE THE LEGISLATURE, AND NOT THE COMMISSION, HAS SPECIFICALLY FASHIONED THE POWER CONFERRED ON THE CONSERVATOR, AS IS THE CASE WITH THE PASSAGE OF TITLE THROUGH SECTION 130.2A, SECTION 130.1A IS HARDLY A VALID SOURCE UPON WHICH THE COMMISSION CAN OR SHOULD RELY TO THWART AN OTHERWISE CLEAR LEGISLATIVE PLAN.

IN FURTHER SUPPORT OF JUSTICE STEIN'S ARGUMENT THAT THE COMMISSION MAY PERMIT TITLE TO REVERT TO ADAMAR, HE

POINTS TO SECTION 130.7, WHICH IN PERTINENT PART PROVIDES THAT:

during the period of any conservatorship...**the casino operation in the form of the conservatorship** shall be deemed to be a licensed casino operation and any reference in the Casino Control Act to any obligations or responsibilities incumbent upon a casino licensee or those persons dealing with, affiliated with, having an interest in, or employed by a casino licensee shall be deemed to apply to the said casino operation.

IN HIS ARGUMENT, JUSTICE STEIN TREATS “ADAMAR” AS THE EQUIVALENT OF “THE CASINO OPERATION IN THE FORM OF THE CONSERVATORSHIP.” HOWEVER, WHEN THE LEGISLATURE REFERS TO A COMPANY, LIKE ADAMAR, THAT HAS BEEN DENIED A RENEWAL OF ITS CASINO LICENSE, IT DOES SO CONSISTENTLY THROUGHOUT THE STATUTORY CONSERVATORSHIP PROVISIONS WITH THE PHRASE, “FORMER LICENSEE,” WHICH IS NOT SYNONYMOUS WITH “THE CASINO OPERATION IN THE FORM OF THE CONSERVATORSHIP.” IT IS THE LATTER, AND NOT THE FORMER, THAT IS DEEMED TO BE A LICENSED CASINO OPERATION. THUS, JUSTICE STEIN’S RELIANCE ON SECTION 130.7 FOR THE PROPOSITION THAT ADAMAR IS SOMEHOW PRESENTLY LICENSED IS MISPLACED.

JUSTICE STEIN ALSO DISCUSSES SECTION 130.2C, THE PERTINENT PART OF WHICH PROVIDES THAT A CONSERVATOR, WHEN SELLING OR CONVEYING ALL THE PROPERTY OF A FORMER

LICENSEE TO THE ENTITY THAT ULTIMATELY WILL OWN AND OPERATE THE CASINO HOTEL AT THE CONCLUSION OF THE CONSERVATORSHIP, MAY DO SO:

only to such persons who shall be eligible to apply for and shall qualify as a casino licensee in accordance with the provisions of the Casino Control Act.

JUSTICE STEIN CORRECTLY NOTES THAT THE QUOTED CASINO LICENSE ELIGIBILITY AND QUALIFICATION REQUIREMENTS FROM SECTION 130.2C PERTAIN TO THE ULTIMATE BUYER. THUS, THEY DO NOT HAVE ANY DIRECT APPLICABILITY TO THE JUSTICE'S PROPOSED RECONVEYANCE TO ADAMAR. HOWEVER, JUSTICE STEIN INCORRECTLY ASSUMES THAT THE ACT DOES NOT ELSEWHERE IMPOSE SUCH REQUIREMENTS. AS EARLIER DISCUSSED, SECTION 82 DOES PRECISELY THAT AND FATALLY UNDERMINES HIS ARGUMENT.

JUSTICE STEIN ALSO PROMOTES THE ADVISABILITY OF A STOCK SALE OVER AN ASSET PURCHASE. IT IS UNNECESSARY TO DECIDE WHAT FORM THE TRANSACTION SHOULD TAKE FOR PURPOSES OF THE PENDING PETITION. SUFFICE IT TO SAY, THE ORDER APPOINTING JUSTICE STEIN CONSERVATOR MADE IT CLEAR THAT SELLING ADAMAR'S EQUITY SECURITIES OR SELLING ALL THE FORMER LICENSEE'S ASSETS IN BULK ARE BOTH VIABLE ALTERNATIVES, SO LONG AS THE SALE IS DONE IN ACCORDANCE WITH THE ICA

REQUIREMENT THAT TROPICANA CASINO AND RESORTS DERIVE NO RETURN BEYOND THE LOWER OF ITS ACTUAL COST OR THE PROPERTY'S VALUE CALCULATED AS OF DECEMBER 12, 2007, WHEN THE ICA TRUST BECAME OPERATIVE.

FOR EXAMPLE, IF AS CONSERVATOR, JUSTICE STEIN WERE TO SELL ALL OF ADAMAR'S ASSETS IN BULK, *N.J.S.A. 5:12-130.6* REQUIRES THAT THE NET SALE PROCEEDS THEREFROM BE PAID TO ADAMAR AS THE FORMER LICENSEE. HAD THERE BEEN NO ICA TRUST, ADAMAR WOULD BE FREE TO DISTRIBUTE THOSE PROCEEDS TO ANY OF ITS INTERMEDIARY AND HOLDING COMPANIES IN ACCORDANCE WITH WHATEVER VALID INSTRUCTIONS THEY ISSUED. HOWEVER, WITH THE ICA TRUST IN PLACE, APPROPRIATE STEPS IN THOSE CIRCUMSTANCES WOULD NEED TO BE TAKEN TO DISPENSE WITH A SALE OF ADAMAR'S EQUITY SECURITIES, WHICH AT THAT POINT WOULD BE REDUNDANT, AND TO RELEASE THE FUNDS FROM THE STRICTURES OF THE TRUST, BUT ONLY IN AN AMOUNT THAT IS CAPPED BY THE ACTUAL COST FORMULA. UNDER SUCH A SCENARIO, THE STATUTE SEEMS TO COMPEL JUSTICE STEIN TO RETAIN TITLE TO THE PROPERTY. IN ANY EVENT, EITHER MODE OF CONVEYANCE APPEARS TO ADDRESS REGULATORY REQUIREMENTS.

EVEN GRANTING, FOR THE SAKE OF ARGUMENT, THAT A STOCK

SALE IS THE PREFERRED MODE OF CONVEYANCE, AND IT IS NOT ALTOGETHER CLEAR THAT IS THE CASE, JUSTICE STEIN MISPERCEIVES WHEN ADAMAR MAY RECOVER TITLE TO THE ASSETS. FOR INSTANCE, IN THE CASE OF A STOCK PURCHASER THAT IS ALREADY KNOWN TO THE REGULATORS, AND UPON WHICH THE DIVISION PRESUMABLY COULD REPORT FAVORABLY IN SHORT ORDER, A CONVEYANCE OF TITLE COINCIDENT TO A STOCK SALE WOULD APPEAR IN ORDER, ASSUMING THAT THE COMMISSION WERE TO FIND THAT ADAMAR THROUGH ITS NEW OWNERS WAS PURGED OF THE TAIN OF DISQUALIFICATION AND AGAIN LICENSABLE.

HOWEVER, FOR A STOCK PURCHASER THAT UNDERTAKES ITS OWN SEPARATE ICA PROCESS, THE GRANTING OF ICA IS NOT SUFFICIENT, IN MY VIEW, FOR THE CASINO TO REMAIN OPEN UNLESS A CONSERVATOR REMAINS IN PLACE THROUGH THE PLENARY QUALIFICATION OF THE NEW STOCK PURCHASER. ONLY UPON SUCH QUALIFICATION COULD ADAMAR REACQUIRE TITLE, AS SEEMINGLY BORNE OUT BY SECTION 130.8D, WHICH PROVIDES THAT:

The sale, assignment, transfer, pledge or other disposition of the securities issued by a former or suspended licensee during the pendency of a conservatorship action instituted pursuant to this article shall neither divest, have the effect of divesting, nor otherwise affect the powers conferred upon a conservator by this amendatory and supplementary act.

AMONG THE POWERS CONFERRED ON A CONSERVATOR ARE

THOSE SET FORTH IN SECTION 130.2A, WHICH MANDATES THE VESTING OF TITLE IN THE CONSERVATOR. THUS, THE LEGISLATURE WAS APPARENTLY SATISFIED WHEN IT AMENDED SECTION 130.8D BY *P.L.*1987, C.410, HAVING JUST ENACTED THE ICA PROVISIONS THAT SAME YEAR IN *P.L.*1987, C.409, THAT A STOCK TRANSFER THROUGH ICA WOULD NOT DISLODGE TITLE FROM THE CONSERVATOR. ACCORDINGLY, FOR SOUND STATUTORY AND POLICY REASONS, JUSTICE STEIN'S RUSH TO RETURN TITLE TO ADAMAR IS MISPLACED AND IN MY VIEW MUST FAIL.

GIVEN THE OVERWHELMING STATUTORY BASES MILITATING AGAINST GRANTING JUSTICE STEIN'S PETITION, THE POLICY REASONS HE ADVANCES ARE, AT BEST, MARGINAL. PRIMARILY, JUSTICE STEIN ENVISIONS THAT BANKRUPTCY WILL SHORTLY ENSUE UNLESS HE IS ALLOWED TO RECONVEY TITLE. CONTRARY TO THE JUSTICE'S PREDICTIONS, SEVERAL CASINO LICENSEES HAVE SUCCESSFULLY NAVIGATED THROUGH BANKRUPTCY AND SURVIVED. CERTAINLY, THERE IS NO GUARANTEE THAT ADAMAR WOULD BE AS FORTUNATE, ESPECIALLY IF IT WERE TO BE DRAWN INTO A BANKRUPTCY FILING OF ITS FORMER PARENT THAT IS VENUED IN A REMOTE JURISDICTION.

IN THAT REGARD, THE FULL EFFECT, IF ANY, OF A BANKRUPTCY,

WHETHER VOLUNTARY OR INVOLUNTARY, REMAINS UNKNOWN FOR PURPOSES OF THE FUNCTIONING OF THE CONSERVATORSHIP AND THE TRUSTEESHIP. NEVERTHELESS, THAT RISK, AND WHATEVER ATTENDANT DELAY IT MAY CAUSE IN THE SALE PROCESS, CANNOT JUSTIFY GRANTING JUSTICE STEIN'S PETITION AND ALLOWING A TRANSFER THAT IS SO BLATANTLY CONTRARY TO THE NEW JERSEY LEGISLATIVE SCHEME JUST FOR THE SAKE OF DERIVING A PERCEIVED LITIGATION ADVANTAGE. ALTHOUGH THE SPEED WITH WHICH A SALE OCCURS IS AN ELEMENT OF THAT PROCESS, THE OVERRIDING REGULATORY CONCERN IS THAT THE PURCHASER MUST MEET THE ACT'S STRICT QUALIFICATION CRITERIA. IF ALONG THE WAY, WHETHER IN OR OUT OF BANKRUPTCY, THE COMMISSION CONFRONTS A SITUATION WHERE, FOR INSTANCE, CONTROL OF THE CASINO HOTEL WOULD BE PASSED TO SOMEONE WHO IS REGULATORILY UNSUITABLE, ALL AVAILABLE OPTIONS MUST BE EXPLORED, INCLUDING THE PAINFUL PROSPECT OF ORDERING THE CLOSURE OF THE CASINO.

AS FOR THE TIMING OF JUSTICE STEIN'S APPLICATION, WHICH FOLLOWS ON THE HEELS OF THE RULING IN DELAWARE ADVERSE TO TROPICANA ENTERTAINMENT, IT CERTAINLY APPEARS THAT HIS APPLICATION COULD BE PERCEIVED TO BE FOR THE BENEFIT OF

ADAMAR'S DISQUALIFIED PARENT COMPANIES. THE MARCH 4TH LETTER TO JUSTICE STEIN FROM COUNSEL FOR TROPICANA ENTERTAINMENT CERTAINLY HEIGHTENS THAT PERCEPTION.

THE SIGNIFICANCE OF THE LETTER FROM COUNSEL FOR TROPICANA ENTERTAINMENT CANNOT BE DISCOUNTED. EVEN HAD NO SUCH REQUEST BEEN MADE, JUSTICE STEIN'S PETITION TO RECONVEY TITLE WOULD SEEM DESIGNED TO BENEFIT TROPICANA ENTERTAINMENT IN ITS LITIGATION WITH WILMINGTON TRUST. AS I MENTIONED EARLIER WHEN ADDRESSING INTERVENTION, ANY COMMISSION INVOLVEMENT IN EXTRA-REGULATORY MATTERS BETWEEN PRIVATE PARTIES NECESSARILY IS LIMITED AND ARISES SOLELY AS INCIDENTAL TO ITS FULFILLING ITS FUNCTIONS UNDER THE CASINO CONTROL ACT.

UNFORTUNATELY, JUSTICE STEIN'S PETITION NOT ONLY SQUARELY INTERJECTS THE COMMISSION IN THE DELAWARE LITIGATION, BUT ALSO PURPORTS TO DO SO WITHOUT PROVIDING A SOUND BASIS UNDER THE CASINO CONTROL ACT FOR THE COMMISSION TO ACT. WORSE, IN LIGHT OF THE MARCH 4, 2008, LETTER TO THE JUSTICE, ANY FAVORABLE RESOLUTION ON HIS PETITION, EVEN IF CLEARLY SUPPORTED BY THE ACT, WHICH IT IS NOT, WOULD BE SEEN AS THE COMMISSION ALIGNING ITSELF WITH

ADAMAR'S DISQUALIFIED PARENT COMPANIES AGAINST WILMINGTON TRUST AND THE NOTEHOLDERS.

MOREOVER, IT IS NOT AT ALL CLEAR THAT THE REQUESTED RECONVEYANCE WOULD CURE TROPICANA ENTERTAINMENT'S DELAWARE DILEMMA. EVEN IF THERE WERE A GUARANTEE THAT THE DELAWARE COURT WOULD FIND THAT THE RECONVEYANCE CURES THE DEFAULT, THERE WOULD STILL BE NO CAUSE UNDER THE ACT FOR THE COMMISSION TO GRANT THE JUSTICE'S PETITION, BUT THE ABSENCE OF SUCH A DEFINITIVE RULING FROM THE DELAWARE COURT CERTAINLY MAKES IT EASIER TO REJECT THE RELIEF THE JUSTICE REQUESTS.

FURTHER, THE CLEAR IMPLICATION FROM JUSTICE STEIN'S PETITION IS THAT THE REQUESTED RECONVEYANCE IS THE SOLE MEANS TO CURE THE DEFAULT. HOWEVER, OTHER MEANS FOR TROPICANA ENTERTAINMENT TO CURE THE DEFAULT ARE ASSUREDLY AVAILABLE, INCLUDING THE PURSUIT OF AN APPEAL OF THE DELAWARE COURT'S RULING AS NOTED BY THE DIVISION. UNFORTUNATELY, AS THE MARCH 4, 2008, LETTER SUGGESTS, THE KNEE JERK REACTION WAS TO HAVE THE COMMISSION PROVIDE A QUICK FIX DESPITE THE ADVERSE CONSEQUENCES TO THE REGULATORY APPARATUS.

JUSTICE STEIN TODAY PROCLAIMED THAT HIS PROPOSED REMEDY IS THE ONLY PRAGMATIC APPROACH, DISMISSING THE DIVISION'S CONTRARY POSITION, CHARACTERIZING IT AS AN ULTRA-TECHNICAL INTERPRETATION OF THE CASINO CONTROL ACT. IN DOING SO, HE ARGUES THAT THE ACT HAS PERCEIVED LIMITATIONS IN ADDRESSING THE "PERFECT STORM" OF A SIMULTANEOUS CONSERVATORSHIP AND OPERATIVE ICA TRUST AGREEMENT. HE IMPORES THE COMMISSION TO RECTIFY THIS PERCEIVED STATUTORY DEFECT BY TAKING ACTION THAT HE READILY CONCEDES WOULD BE IN DIRECT VIOLATION OF THE SPECIFIC LANGUAGE IN THE ACT BECAUSE HE CLAIMS THAT THERE ARE OVERRIDING POLICY AND PRACTICAL CONCERNS THAT SHOULD MILITATE AGAINST OUR STRICT ADHERENCE TO THE STATUTE. HOWEVER, AS COMMISSIONER EPPS APTLY NOTED DURING THE EARLIER COLLOQUY, IT IS OUR STATUTORY MISSION TO ENFORCE THE ACT. WHERE AS HERE, THE LANGUAGE IS EMINENTLY CLEAR, AND THERE IS ABSOLUTELY NO VALID CLAIM THAT ANY AMBIGUITY EXISTS AS TO THE DIRECTION WE MUST TAKE IN THIS MATTER, JUSTICE STEIN'S PROTESTATIONS NOTWITHSTANDING, THE ANSWER IN THIS CASE IS RATHER SIMPLE. IN MY JUDGMENT, WE MUST DENY THE RELIEF REQUESTED, CONSISTENT WITH THE CLEAR

STATUTORY MANDATE OF OUR ENABLING LEGISLATION.

WITH THAT, I MOVE (1) TO DENY IN ALL RESPECTS JUSTICE STEIN'S PETITION TO RECONVEY TITLE, (2) TO ISSUE FURTHER INSTRUCTIONS TO HIM, IN HIS CAPACITY AS CONSERVATOR AND TRUSTEE, THAT ANY OTHER APPLICATIONS THAT HE INTENDS TO PRESENT TO THE COMMISSION SHOULD ONLY BE BROUGHT AFTER FIRST SECURING PERMISSION FROM THE CHAIR TO DO SO AND (3) TO DISMISS AS MOOT WILMINGTON TRUST'S SEPARATE PETITION UNDER SECTION 130.10.